UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/975,522	10/10/2001	Christopher Peiffer	1014-141US02	9120

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EXAMINER
POLLACK, MELVIN H

ART UNIT	PAPER NUMBER
2145	

DATE MAILED: 12/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Advisory Action ***Before the Filing of an Appeal Brief***	09/975,522	PEIFFER ET AL.
	Examiner	**Art Unit**	
	Melvin H. Pollack	2145	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>16 October 2006</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☒ The period for reply expires <u>3</u> months from the mailing date of the final rejection.

   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

     Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ They raise the issue of new matter (see NOTE below);

   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

     NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: *1-8,10-18 and 20-25*.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
   <u>See Continuation Sheet.</u>

12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). <u>8/18/06</u>

13. ☐ Other: _____.

JASON CARDONE   MHP
SUPERVISORY PATENT EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: they require a more narrow reading of the claims than currently stated.

Much of the arguments rely on the usage of sockets, even though most of the claims do not actually specify the usage of sockets. Claim 17 uses sockets solely in the context of setting up a communication process, with a lack of description of the decision process or its relationship to the multiplexing of data. All other claims fail to mention it, and there is a difference between socket being an example and socket being a necessary function.

As for load balancing vs. multiplexing, load balancing works by multiplexing. The claims as drawn do not limit the system to a single physical server (not counting gateway) nor do they draw any limitation expressly stating that multiplexing occurs within a server, let alone bars multiplexing to different servers. The only requirement is that there is at least one physical server that will eventually receive the connection, but that a second one that could have received it, but did not, is not barred. Further, the applicant is reminded that he cannot rely fully upon the use of limitations in the preamble.

As for several arguments regarding the purpose of the items, intended use is not a patentable limitation. Systems with similar functionality may be used for other uses.

The claims as currently drawn do not disclose "distribution of client requests at the connection/socket level."

Aiken teaches the usage of multiplexing and demultiplexing using an intermediate server. Okanova teaches this as well (Fig. 1, #6). Okanova also teaches agents on the physical servers (Figs. 2-4). However, these agents are there to determine their operating status, including activity status, and as such are each associated with a client TCP connection. As for their physicality on the server, they then communicate with state management agents (Fig. 2, #13, 23, 33 talk to Fig. 2, #111) to track TCP connections (Fig. 2, #122). Further, there is insufficient explanation as to how the usage of agents of such structure in any way impacts the functionality of the invention as a whole. There is also a lack of definitions regarding client TCP connections, and particularly in whether a client may have multiple connections.

Finally, one can teach load balancing within a server, and this is the ultimate purpose of Aiken, wherein a server may have a multitude of communication protocol stacks with the same IP address, the multiplexer operating to determine which protocol stack to use. The definition of a socket is "an identifier for a particular service on a particular node on a network, consisting of a node address and a port number, which identifies the service." (If applicant wishes to use a narrower definition, he should either define it in the specification or provide art regarding the narrower definition.) As such, Aiken's usage of ports will cover the claims, including those that specify sockets.

A more detailed and comprehensive argument will be provided in response to an RCE or Notice of Appeal.